

In the Matter of Merchant Mariner's Document No. Z-756751-D1 and all other Seaman Documents

Issued to: ROBERT E. TURNAGE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ROBERT E. TURNAGE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 14 October 1958, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as chief cook on board the United States SS EXAMINER under authority of the document above described, on or about 24 May 1958, Appellant wrongfully engaged in a fight with a fellow crew member, Basil B.M. Herout, at Iskenderum, Turkey.

At the hearing, Appellant was represented by counsel of his own choice. He entered a plea of not guilty to the charge and specification. The Investigating Officer introduced in evidence the testimony of Cadet Francis Duquemin and, without objection, an entry in the Official Logbook with attached statements relative to the incident in question. Appellant testified in his defense.

At the conclusion of the hearing, the Examiner rendered the decision in which he entered an order suspending all documents, issued to Appellant, for a period of two months outright and four months on twelve months' probation.

The decision was served on 14 October 1958. Appeal was timely filed on 13 November.

FINDING OF FACT

On 24 May 1958, Appellant was serving as chief cook on board the United States SS EXAMINER and acting under authority of his Merchant Mariner's Document No. Z-756751-D1 while the ship was in the port of Iskenderum, Turkey.

About 2230 on this date, messman Basil B.M. Herout returned to the ship by cab with another crew member. Herout went to his room. Both seaman had been drinking intoxicants while ashore. The cab driver came on board with a policeman to settle the matter as to whether the cab fare had been paid. Appellant brought Herout on deck.

Herout asked the driver if the former had paid his share of the fare and received an affirmative answer. As Herout was walking away, Appellant asked him how much he had paid and Herout replied that it was none of Appellant's business. Appellant grabbed Herout and pushed him. Appellant then struck Herout several blows on the face with his fist. Herout fell to the deck, got up and went to his room.

The Master of the ship filed a report stating that, as a result of this incident, Herout was incapacitated for more than three days.

Appellant has a comparatively minor prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision is contrary to the weight of the evidence since the only witness to appear against Appellant testified that there were a number of persons present when the fracas took place and that Basil Herout was struck by a man with a dark complexion and approximately 5 feet, 10 inches tall. The Examiner took judicial notice of the facts that Appellant has a brown complexion and is about 5 feet, 1 inch tall. Therefore, Appellant was not the man who struck Herout.

APPEARANCE: Benjamin Sneed, Esquire, of New York City, of Counsel.

OPINION

There is no merit in the contention raised on appeal which is inconsistent with the position taken at the hearing that Appellant acted in self-defense but only pushed Herout twice rather than striking him. Appellant's identity as the person who struck Herout is definitely fixed by the testimony of Cadet Duquemin and the supporting documentary evidence including a statement by Herout and another member of the crew. The Cadet was a disinterested witness whose version was substantially accepted by the Examiner who heard and observed the witnesses testify. The Cadet testified that he had often seen Appellant.

Contrary to the contention on appeal, the one minor discrepancy as to Appellant's identification is the Cadet's testimony, based on recollection during Appellant's absence, that Appellant is not shorter than 5 feet, 6 inches (R.12) (not about 5 feet, 10 inches as contended[^] and not lighter complexioned than counsel (R.13) (not "dark" complexioned as contended), as opposed to official notice taken by the Examiner, based on observation at the time,, of the facts that Appellant is very short in stature (R.27) (not about 5 feet, 1 inch as contended) and has a lighter complexion than counsel(R.27). This cannot prevail against the very conclusive testimony that Appellant is the guilty party. He even admitted this to the extent of testifying that he pushed Herout as a result of which he twice fell to the deck. Although Appellant agreed with the Cadet's testimony that there were several other seaman present, not one was produced to testify that someone other than

Appellant struck Herout. Also, there is no doubt that Appellant was the aggressor throughout the incident.

ORDER

The order of the Examiner dated at New York, New York, on 14 October 1958, is ~~REVERSED~~ **AFFIRMED**.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 11th day of September, 1959.